

LAW OFFICES  
**BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212

877.534.2590  
FAX 310.247.0160  
www.brodskysmith.com

PENNSYLVANIA OFFICE  
TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004  
610.667.6200

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

NEW JERSEY OFFICE  
1040 KINGS HIGHWAY NORTH, STE. 601  
CHERRY HILL, NJ 08034  
856.795.7250

Email: [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)

February 3, 2021

**VIA CERTIFIED MAIL & ELECTRONIC MAIL**

Citizen Suit Coordinator Department of Justice Environment and Natural Resources Division Law and Policy Section P.O. Box 7415 Ben Franklin Station Washington, DC 20044-7415	Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460
Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	

Re: *Alesha Davis v. California Metal-X (CMX)*  
**CACD - 2:20-cv-07066-DMG-AFM**

To Whom It May Concern:

We represent Plaintiff Alesha Davis in the above-referenced action. Please find enclosed a copy of (i) the [Proposed] Consent Decree in the above-referenced action to for review pursuant to the Clean Water Act, 33 U.S.C. § 1365(c)(3) and 40 C.F.R. 135.5; and (ii) a letter from the non-profit entity Council for Watershed Health regarding funds it is to receive under the terms of the [Proposed] Consent Decree in the form of a supplemental environmental project.

Respectfully,



Evan J. Smith

1 Evan J. Smith (SBN 242352)  
2 Ryan P. Cardona (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Tel: 877.534.2590  
7 Fax: 310.247.0160  
8 Email: esmith@brodskysmith.com  
9 rcardona@brodskysmith.com

10 *Attorneys for Plaintiff*

11 Ruben A. Castellón (SBN 154610)  
12 CASTELLON & FUNDERBURK LLP  
13 811 Wilshire Blvd., Suite 1025  
14 Los Angeles, CA 90017  
15 Tel: 213.623.7515  
16 Fax: 213.532.3984  
17 Email: rcastellon@candffirm.com

18 *Attorneys for Defendant*

19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 ALESHA DAVIS,

22 Plaintiff,

23 vs.

24 CALIFORNIA METAL-X (CMX),

25 Defendant,

Civil Case No.: 2:20-cv-07066-DMG-AFM

**[PROPOSED] CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 et seq.)**

**CONSENT DECREE**

The following Consent Decree is entered into by and between Alesha Davis ("Plaintiff") and California Metal-X (CMX) ("CMX"). The entities entering into this Consent Decree are each an individual "Settling Party" or "Party" and collectively the "Settling Parties" or "Parties".

**WHEREAS**, Plaintiff is a citizen of the State of California.

**WHEREAS**, Plaintiff is concerned with the environmental health of the Los Angeles River and overall Los Angeles River Watershed, of which the Los Angeles River is a part, and uses and enjoys the waters of the Los Angeles River, its inflows, outflows and other waters of the Los Angeles River Watershed;

**WHEREAS**, CMX is the owner and operator of a facility that is engaged in the manufacture of brass and bronze engineered alloys and ingots for foundry and mill customers, located at 366 East 58th St., Los Angeles, CA 90011, hereinafter referred to by the Settling Parties as the "Facility;"

**WHEREAS**, Plaintiff contends that her use and enjoyment of these waters are negatively affected by the pollution allegedly caused by the operations at the Facility;

**WHEREAS**, Plaintiff acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes;

**WHEREAS**, the discharges from the Facility are regulated by the National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001, [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Storm Water Permit"), and as amended by Order No. 2014-0057-DWQ ("IGP"), and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA");

**WHEREAS**, the Facility is listed as operating under SIC Code 3341, relating to Secondary Smelting and Refining of Nonferrous Metals, and SIC Code 5093, relating to Scrap and Waste Recycling. Defendant has coverage for the Facility under the California Industrial General Permit, under the issued WDID No. 4 19I000881. The July 1, 2015 "Notice of Intent" for the Facility to comply with the terms of the Industrial Stormwater Permit lists "California Metal X" and "CA Metal X" as the Operator and Facility names, respectively;

1       **WHEREAS**, on December 6, 2019, Plaintiff sent CMX, the United States Environmental  
2 Protection Agency ("EPA"), EPA Region IX, the State Water Resources Control Board ("State Board"),  
3 and the Regional Water Quality Control Board – Los Angeles Region ("Regional Board") a notice of  
4 intent to file suit ("Notice Letter") under Sections 505(a) and (b) of the Clean Water Act, 33 U.S.C. §§  
5 1365(a) and (b). The Notice Letter alleged violations of Section 301(a) of the Clean Water Act, 33 U.S.C.  
6 § 1311(a) and violations of the 1997 Storm Water Permit and the IGP at the CMX Facility<sup>1</sup>;

7       **WHEREAS**, on August 6, 2020, Plaintiff filed a complaint against CMX in the United States  
8 District Court, Central District of California (Case No. 2:20-cv-07066-DMG-AFM), alleging violations  
9 of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Storm Water Permit  
10 at the CMX Facility ("Complaint");

11       **WHEREAS**, Plaintiff alleges CMX to be in violation of the substantive and procedural  
12 requirements of the 1997 Storm Water Permit, the IGP and the Clean Water Act with respect to the CMX  
13 Facility;

14       **WHEREAS**, on or about December 10, 2020, Plaintiff's expert environmental consultant  
15 conducted an inspection of the Facility;

16       **WHEREAS**, on March 24, 2020 CMX uploaded a revised SWPPP to the State Water Board's  
17 Storm Water Multiple Application & Report Tracking System ("SMARTS"), containing additional BMPs,  
18 in response to the allegations contained in Plaintiff's Notice Letter.

19       **WHEREAS**, CMX continues to deny all allegations in the Notice Letter and Complaint relating  
20 to the CMX Facility;

21       **WHEREAS**, Plaintiff and CMX have agreed that it is in the Settling Parties' mutual interest to  
22 enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set  
23 forth in the Notice Letter and Complaint without further proceedings; and

24       **WHEREAS**, all actions taken by CMX pursuant to this Consent Decree shall be made in  
25 compliance with all applicable federal and state laws and local rules and regulations.

26  
27  
28 <sup>1</sup> For purposes of this Consent Decree, the Industrial General Permit and any amendments thereto in  
effect at the time of CMX's required compliance with the terms of this Consent Decree shall be referred  
to as "the Industrial General Permit" or "IGP."

1           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTling**  
2 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

3           1.       The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)  
4 of the Clean Water Act, 33 U.S.C. § 1365(a);

5           2.       Venue is appropriate in the Central District of California pursuant to Section 505(c)(1) of  
6 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the CMX Facility is located within this District;

7           3.       The Complaint alleges claims upon which relief may be granted pursuant to Section  
8 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

9           4.       Plaintiff has standing to bring this action;

10          5.       The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of  
11 this Consent Decree for the term of the Consent Decree, or as long thereafter as is necessary for the Court  
12 to resolve any motion to enforce this Consent Decree.

13 **I.       OBJECTIVES**

14           It is the express purpose of the Settling Parties entering into this Consent Decree to further the  
15 objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, et seq., and to resolve those issues alleged  
16 by Plaintiff in her Notice Letter and Complaint. Specifically, CMX agrees to comply with Receiving  
17 Water Limitation VI.A. in the IGP which requires that CMX “shall ensure that industrial storm water  
18 discharges ... do not cause or contribute to an exceedance of any applicable water quality standards in any  
19 affected receiving water,”; Effluent Limitation V.A. of the IGP which requires that CMX “shall implement  
20 BMPs [Best Management Practices] that comply with the BAT/BCT requirements of . . . [the IGP] to  
21 reduce or prevent discharges of pollutants in . . . [CMX’s] storm water discharge in a manner that reflects  
22 best industry practice considering technological availability and economic practicability and  
23 achievability”; and the Monitoring, Sampling, and Analysis Requirements found in § XI of the IGP. CMX  
24 shall maintain BMP compliance with BAT/BCT standards and with the applicable water quality standards  
25 as those terms are defined by the IGP. Nothing herein shall be interpreted as an admission by CMX that  
26 it has previously failed to comply with these or any other requirements of the CWA or the IGP.

27 **II.       AGENCY REVIEW AND TERM OF CONSENT DECREE**

28 **A.       Agency Review and Comment.** Plaintiff shall submit this Consent Decree to the United States

1 Department of Justice and the EPA (collectively "Federal Agencies") within three (3) days of the final  
2 signature of the Settling Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review  
3 period expires forty-five (45) days after receipt by both agencies, as evidenced by written  
4 acknowledgement of receipt by the agencies or the certified return receipts, copies of which shall be  
5 provided to CMX. In the event that the Federal Agencies object to entry of this Consent Decree, the  
6 Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies  
7 within a reasonable amount of time.

8 **B. Effective Date.** The term "Effective Date" as used in this Consent Decree shall mean the day the  
9 Court enters this Consent Decree.

10 **C. Termination Date.** This Consent Decree shall terminate two (2) years after the Effective Date  
11 ("Termination Date"), or at such time as CMX ceases to have stormwater discharges subject to the IGP  
12 and CMX: 1) files all necessary and appropriate submissions regarding the same to the State Board and/or  
13 the Regional Board; and 2) provides notice of such filing to Plaintiff, unless there is a prior ongoing,  
14 unresolved dispute regarding CMX's compliance with this Consent Decree.

### 15 **III. POLLUTION CONTROL REQUIREMENTS**

#### 16 **A. Storm Water Pollution Reduction Measures**

17 1. The storm water pollution control measures required by this Consent Decree shall be  
18 designed and operated to manage storm water discharges, through full compliance with the IGP.

19 2. Commencing from the Effective Date through the Termination Date, CMX shall engage in  
20 the following activities to maintain compliance with the IGP and this Consent Decree:

21 (a) CMX will appoint a Qualified Industrial Storm Water Practitioner ("QISP") within sixty  
22 (60) days after the Effective Date;

23 (b) Update the Storm Water Pollution Prevention Plan to include the QISP's identification  
24 number, name, and contact information (telephone number, e-mail address).

25 3. In addition to the activities described in Sections III.A.2(a) above, CMX will assure the  
26 incorporation of the following BMPs, as more fully described in CMX's SWPPP, which shall be  
27 implemented at the Facility, the boundaries of which are outlined on the CMX's Facility Site Map ("Site  
28 Map"), (the Site Map is attached as Exhibit "A" hereto). The Parties agree that the SWPPP may be

1 modified from time to time as more fully described in this Consent Decree. In the event of a modification  
2 to the SWPPP or Facility Site Map during the term of this Consent Decree, CMX will provide a copy of  
3 the revised SWPPP or Facility Site Map to Plaintiff and will upload to SMARTs as required by the  
4 General Permit.

5 **(a) BMPs**

6 **(i)** CMX will implement and maintain two individual infiltration pits, with the capacity  
7 to prevent discharge from an 85th percentile, 24-hour storm event, with a 24-hour  
8 drawdown time;

9 **(ii)** CMX will implement and maintain a treatment and infiltration system which will  
10 eliminate all discharge of stormwater from any storm event up to and including the  
11 85th percentile, design storm with a 24-hour drawdown time.

12 **4.** Within forty-five (45) days after the Effective Date, CMX shall revise the SWPPP for the  
13 CMX Facility to include any BMPs required by the Consent Decree and comply with all provisions of the  
14 Permit.

15 **5.** Throughout the term of this Consent Decree, CMX shall submit any SWPPP revisions  
16 made pursuant to the requirements of this Section III.A to Plaintiff for review and comment within ten  
17 (10) days of the SWPPP revision. Plaintiff will provide comments, if any, to CMX within thirty (30) days  
18 of receipt of such revised SWPPP. CMX shall incorporate Plaintiff's comments into the SWPPP or shall  
19 justify in writing why any comment is not incorporated within fifteen (15) days of receiving comments.

20 **B. Numeric Action Level ("NAL") for Discharges from the CMX Facility.** CMX acknowledges  
21 that the following Numeric Action Levels ("NALs") in the IGP are applicable to the Facility based on the  
22 general parameters required to be sampled pursuant to the IGP, its SIC code(s) and/or pollutant source  
23 assessment: (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Aluminum; (v) Iron; (vi) Lead;  
24 (vii) Zinc; (viii) Copper; and (ix) Chemical Oxygen Demand, and that CMX will continue to act in  
25 conformity with the IGP and the SWPPP for the Facility, as may be amended from time to time.

26 **1. Exceedance Response Actions (ERAs)**

27 **a.** CMX acknowledges that it is required to comply with the Exceedance Response  
28 Action requirements of the IGP as stated in IGP § XII.

1 **C. Sampling and Analysis**

2 1. CMX has installed a recording rain gauge capable of recording rainfall to 0.1 inches at the  
3 CMX Facility. CMX shall maintain the recording rain gauge and maintain records of rain data. CMX  
4 shall provide its rain gauge data within fourteen (14) days of a request made by Plaintiff. In the event  
5 there is a dispute about the quantity of rainfall at the Facility, the rain gauge installed pursuant to this  
6 section shall be deemed to be the actual rainfall at the site.

7 2. During the term of this Consent Decree, and as set forth in the IGP, CMX shall collect  
8 samples of Qualifying Storm Events ("QSE"), as defined in the IGP, from at least one QSE during the  
9 first half of the reporting year (July 1 – December 31) and from one QSE during the second half of the  
10 reporting year (January 1 – June 30) as set forth by compliance group requirements. However, nothing  
11 herein shall require CMX to conduct sampling when a QSE, as defined by the IGP, does not occur.  
12 Furthermore, nothing herein shall require CMX to conduct sampling when no discharge resulting from a  
13 QSE occurs, for example, as a result of a properly implemented stormwater treatment and infiltration  
14 system as described above in § III(A)(3)(a)(i).

15 3. CMX shall comply with the analytical test methods as required by Section XI.B of the IGP  
16 as more fully described in the Monitoring Implementation Plan that is included in its SWPPP. All reported  
17 analyses required by the Consent Decree shall be reported within thirty days of the laboratory receipt of  
18 the sample or as promptly as possible upon receipt if the laboratory takes more than 30 days to report the  
19 analyses.

20 4. During the term of the Consent Decree, CMX will give notice to Plaintiff of the filing of  
21 any reports or other documents containing the complete laboratory results of samples collected as required  
22 by this Consent Decree concurrently with the posting of the same on SMARTS.

23 **D. Visual Observations.** During the term of this Consent Decree, CMX shall conduct and document  
24 visual observations pursuant to Section XI.A of the IGP and as more fully described in the CMX SWPPP.

25 **E. Annual Report.** CMX shall give notice, pursuant to Paragraph VII.E. hereof, to Plaintiff when  
26 CMX submits an Annual Report to the State Board no later than July 15 of each year during the term of  
27 this Consent Decree. The Annual Report shall contain all information required by the IGP.  
28



1 **IV. MONITORING AND REPORTING**

2 **A. Site Inspections.**

3 1. Once during the term of this Consent Decree, Plaintiff may conduct an inspection of the  
4 Facility up to forty-five (45) days prior to the Termination Date. Up to three (3) of Plaintiff's  
5 representatives may attend the site inspection, all of whom agree to execute the attached Release and  
6 Waiver (Exhibit B) prior to entering the Facility. The site inspection shall occur during normal business  
7 hours (7:00 am – 3:30 pm). Plaintiff and CMX shall work in good faith to select a mutually acceptable  
8 date for the inspection, which will be scheduled at least ten (10) business days in advance. CMX's  
9 personnel, consultants, contractors, or attorneys may accompany Plaintiff's representative(s) throughout  
10 the inspection. If Plaintiff takes photos or videos during the site inspection, it must provide copies of  
11 photographs or video to CMX within seven (7) calendar days. CMX may then review and designate  
12 photos as confidential and label any proprietary. CMX shall notify Plaintiff and Plaintiff shall then destroy  
13 the proprietary photos, and maintain all confidential photos as confidential. The only photographs that  
14 will be taken will relate to the infiltration system and previously identified discharge points.

15 2. Plaintiff shall provide CMX with any comments regarding the Site Inspection within  
16 seventy-two (72) hours of the completion thereof. CMX shall respond to Plaintiff's comments within  
17 thirty (30) days of the date on which they are received; however, CMX is not obligated to respond to any  
18 comments regarding the Site Inspection received after seventy-two (72) hours has passed.

19 **B. Compliance Monitoring and Oversight.** CMX shall make a one-time payment of two thousand  
20 dollars (\$2,000) to compensate Plaintiff's Counsel for costs and fees to be incurred for monitoring CMX's  
21 compliance with this Consent Decree. Payment shall be made on or before March 1, 2021 or seven days  
22 after the Consent Decree is approved by the Federal Agencies and entered by the Court, whichever is later.  
23 Payment shall be made payable to "Brodsky & Smith, LLC" via U.S. Mail.

24 **C. CMX Document Provision.** During the term of this Consent Decree, within ten (10) days, CMX  
25 shall give notice to Plaintiff of all documents related to storm water quality at the CMX Facility that are  
26 submitted to the Regional Board, the State Board, and/or any state or local agency, county, or municipality.  
27 Any correspondence related to CMX's compliance with the IGP or storm water quality received by CMX  
28 from any regulatory agency, state or local agency, county, or municipality shall be provided to Plaintiff

1 within ten (10) days of receipt by CMX. Provided, however, that this Consent Decree shall not require  
2 CMX to disclose any information or documents subject to the Attorney Client Privilege or the Attorney  
3 Work Product doctrine.

4 **V. ENVIRONMENTAL PROJECT & REIMBURSEMENT OF LITIGATION FEES & COSTS**

5 **A. Environmental Project.** To remediate the alleged environmental harms resulting from alleged  
6 non-compliance with the 1997 Storm Water Permit and IGP alleged in the Complaint, CMX agrees to  
7 make a payment of Three Thousand Dollars (\$3,000) ) to the "Council for Watershed Health" and mailed  
8 to The Council for Watershed Health attention Eileen Alduenda, Executive Director, 177 E. Colorado  
9 Blvd., Ste. 200, Pasadena, CA 91105 to fund the Monitoring the Impacts of Stormwater Infiltration on  
10 Groundwater Quality program, dedicated to the study and evaluation of the impacts to groundwater quality  
11 from infiltrating stormwater throughout Los Angeles County. The payment shall be made on or before  
12 March 1, 2021 or seven days after the Consent Decree is approved by the Federal Agencies and entered  
13 by the Court, whichever is later.

14 **B. Reimbursement of Attorneys' Fees and Costs.** CMX shall pay a total of Forty Two Thousand  
15 Five Hundred Dollars (\$42,500.00) to "Brodsky & Smith, LLC" for their investigation fees and costs,  
16 expert/consultant fees and costs, and reasonable attorneys' fees incurred as a result of investigating and  
17 preparing the lawsuit and negotiating this Consent Decree. Payment shall be made payable to "Brodsky  
18 & Smith, LLC". The \$42,500 shall be paid as follows: seven thousand five hundred dollars (\$7,500)  
19 shall be paid on or before March 1, 2021 or seven days after the Consent Decree is approved by the Federal  
20 Agencies and entered by the Court, whichever is later and five thousand dollars (\$5,000) shall be paid  
21 on or before the first day of each month beginning in April 2021 through October 2021.

22 **VI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

23 **A. Continuing Jurisdiction.** This Court shall retain jurisdiction over this matter until the  
24 Termination Date defined above for the purposes of implementing and enforcing the terms and conditions  
25 of this Consent Decree and adjudicating all disputes among the Parties that may arise under the provisions  
26 of this Consent Decree, unless a Party files a timely motion and is granted an extension of time from the  
27 Court to retain jurisdiction. The Court shall have the power to enforce this Consent Decree with all  
28 available legal and equitable remedies, including contempt.

1 **B. Meet and Confer.** A Party to this Consent Decree shall invoke the dispute resolution procedures  
2 of this Section by notifying the other Party in writing of the matter(s) in dispute. The Settling Parties shall  
3 then meet and confer in good faith (either telephonically or in person) in an attempt to resolve the dispute  
4 informally over a period of ten (10) business days from the date of the notice. The Parties may elect to  
5 extend this time in an effort to resolve the dispute without court intervention.

6 **C. Dispute Resolution.** If the Parties cannot resolve a dispute by the end of the meet and confer  
7 informal negotiations, then the Parties shall request a settlement meeting before the Magistrate Judge  
8 assigned to this action. In the event that the Parties cannot resolve the dispute by the conclusion of the  
9 settlement meeting with the Magistrate Judge, the Parties agree to submit the dispute via motion to the  
10 District Court.

11 **D. Burden of Proof.** In any dispute resolution proceeding, the Party invoking the dispute resolution  
12 procedures provided herein shall have the burden of demonstrating that the other Party has failed to meet  
13 its obligations as set forth herein.

14 **E. Enforcement Fees and Costs.** The litigation costs and fees incurred in prosecuting a motion to  
15 enforce shall be awarded to the prevailing party pursuant to the provisions set forth in Section 505(d) of  
16 the Clean Water Act, 33 U.S.C. § 1365(d), Federal Rule of Civil Procedure Rule 11, applicable case law  
17 interpreting such provisions, and/or as provided by statutory law and case law.

18 **VI. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

19 **A. Plaintiff's Public Release of Claims.** This Consent Decree is a final and binding resolution  
20 between Plaintiff, on her own behalf, and on behalf of the public and in the public interest, and CMX, and  
21 their parents, subsidiaries, affiliated entities under common ownership, directors, managers, members,  
22 divisions, affiliates, insurers, landlords, lenders, successors or assigns, officers, agents, employees,  
23 attorneys and other representatives, if any (collectively "Releasees"), and shall have a preclusive effect  
24 such that no other person or entity, whether purporting to act in his, her, or its interests or the public  
25 interest shall be permitted to pursue and/or take any action with respect to any violation of the CWA, 1997  
26 Storm Water Permit, and/or IGP that was alleged in the Complaint, Notice Letter, or that could have been  
27 brought pursuant to the Notice Letter or Complaint. Nothing in this Consent Decree waives the rights of  
28 the United States to enforce its rights under Federal Law.

1 **B. Plaintiff's Release of Additional Claims.** As to Plaintiff for and in her individual capacity only,  
2 this Consent Decree shall have preclusive effect such that she shall not be permitted to pursue and/or take  
3 any action with respect to any other statutory or common law claim, to the fullest extent that any of the  
4 foregoing were or could have been asserted by her against CMX or the Releasees based on the facts alleged  
5 in the Complaint and/or the Notice Letter, whether or not based on actions committed by CMX.

6 **C. Waiver of Rights Under Section 1542 of the California Civil Code**

7 1. Plaintiff acting in her individual capacity waives all rights to institute any form of legal  
8 action, and releases all claims against CMX, and the Releasees, (referred to collectively in this Section as  
9 the "Claims"). In furtherance of the foregoing, Plaintiff waives any and all rights and benefits which she  
10 now has, or in the future may have, conferred upon her with respect to the Claims by virtue of the provisions  
11 of § 1542 of the California Civil Code, which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR  
13 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
14 AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,  
15 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
16 DEBTOR OR RELEASED PARTY.

17 2. Plaintiff understands and acknowledges that the significance and consequence of this  
18 waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or  
19 resulting from, or related directly or indirectly to, in whole or in part, the facts in the Complaint or Notice  
20 Letter, Plaintiff will not be able to make any claim for those damages against Releasees.

21 **D. CMX's Release of Plaintiff.** CMX, on behalf of itself, its past and current agents, representatives,  
22 attorneys, successors and/or assignees, hereby waives any and all claims against Plaintiff, her attorneys,  
23 and other representatives for any and all actions taken or statements made (or those that could have been  
24 taken or made) by Plaintiff and her attorney and other representatives, whether in the course of  
25 investigating the Claims or otherwise.

26 **E. Parties' Release.** Unless specifically provided for in this Consent Decree, the Parties, on their  
27 own behalf and on behalf of their current and former officers, directors, employees, and each of their  
28 successors and assigns, and their agents, and other representatives release all persons including, without

1 limitation, all other Parties to this Consent Decree (and each of their direct and indirect parent and  
2 subsidiary companies and affiliates and divisions, and their respective current and former officers,  
3 directors, managers, members, employees, shareholders, insurers, landlords, lenders, and each of their  
4 predecessors, successors, and assigns, and each of their agents, attorneys, consultants, and other  
5 representatives) release each other from any additional attorneys' fees or expenses related to the resolution  
6 of this matter.

7 **F.** Nothing in this Consent Decree limits or otherwise affects any Party's right to address or take any  
8 position that it deems necessary or appropriate in any formal or informal proceeding before the State  
9 Board, Regional Board, EPA, or any other administrative body on any other matter relating to CMX's  
10 compliance with the IGP or the Clean Water Act occurring or arising after the Effective Date of this  
11 Consent Decree.

12 **VII. MISCELLANEOUS PROVISIONS**

13 **A. No Admission of Liability.** Neither this Consent Decree, the implementation of additional or  
14 modified BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as a  
15 finding, adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be construed  
16 as an admission of violation of any law, rule, or regulation. CMX maintains and reserves all defenses it  
17 may have to any alleged violations that may be raised in the future.

18 **B. Construction.** The language in all parts of this Consent Decree shall be construed according to  
19 its plain and ordinary meaning, except as to those terms defined in the IGP, the Clean Water Act, or  
20 specifically herein.

21 **C. Choice of Law and Venue.** The laws of the United States shall govern this Consent Decree, with  
22 venue proper only in the Central District of California.

23 **D. Severability.** In the event that any provision, paragraph, section, or sentence of this Consent  
24 Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
25 adversely affected.

26 **E. Correspondence and Notices.** Any and all notices and/or correspondence between the Parties  
27 provided for or permitted under this Consent Decree shall be in writing and personally delivered or sent  
28 by:

- 1        1.     First-class (registered or certified) mail return receipt requested; or
- 2        2.     Overnight or two-day courier; or
- 3        3.     By email on any Party by the other Party to the following addresses:

4        **If to Plaintiff:**

5        Evan J. Smith, Esquire  
6        Brodsky & Smith, LLC  
7        Two Bala Plaza, Suite 805  
8        Bala Cynwyd, PA 19004  
9        T: 877.354.2590  
10       Email: esmith@brodskysmith.com

11       **If to CMX:**

12       Ruben Castellón  
13       Castellón & Funderburk LLP  
14       811 Wilshire Blvd. Ste. 1025  
15       Los Angeles, CA 90017-2649  
16       rcastellon@candffirm.com

17       Any change of address or addresses shall be communicated in the manner described above for giving  
18       notices.

19       **F.     Counterparts.** This Consent Decree may be executed in any number of counterparts, all of which  
20       together shall constitute one original document. Telecopy, email of a .pdf signature, or facsimile copies  
21       of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

22       **G.     Modification of the Consent Decree.** Except as otherwise provided herein, this Consent Decree,  
23       and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written  
24       instrument, signed by the Settling Parties, or upon motion of any Party as provided by law and upon an  
25       entry of a modified Consent Decree by the Court. If any Settling Party wishes to modify any provision of  
26       this Consent Decree, the Settling Party must notify the other Settling Party in writing at least twenty-one  
27       (21) days prior to taking any step to implement the proposed change.

28       **H.     Full Settlement.** This Consent Decree contains the sole and entire agreement and understanding  
29       of the Parties with respect to the entire subject matter hereof, and any and all discussions, negotiations,

1 commitments and understandings related thereto. No representations, oral or otherwise, express or  
2 implied, other than those contained herein have been made by any party hereto. No other agreements not  
3 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

4 **I. Integration Clause.** This is an integrated Consent Decree. This Consent Decree is intended to  
5 be a full and complete statement of the terms of the Consent Decree between the Settling Parties and  
6 expressly supersedes any and all prior oral or written Consent Decrees, covenants, representations, and/or  
7 warranties (express or implied) concerning the subject matter of this Consent Decree.

8 **J. Authority of Counsel.** The undersigned representatives for Plaintiff and CMX each certify that  
9 he/she is fully authorized by the party whom he/she represents to approve this Consent Decree as to form.

10 **K. Authority.** CMX certifies that its undersigned representative is fully authorized to enter into this  
11 Consent Decree, to execute it on behalf of CMX, and to legally bind CMX to its terms.

12 **L. Agreement to be Bound.** The Settling Parties, including any successors or assigns, agree to be  
13 bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement  
14 or enforce its terms.

15 **VIII. COURT APPROVAL**

16 The Parties hereby respectfully request that the Court promptly approve and enter this Consent Decree.  
17 Upon entry of this Consent Decree, Plaintiff and Defendant waive their respective rights to a hearing or  
18 trial on the allegations of the Complaint and Notice Letter which are at issue in this action. If this Consent  
19 Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any  
20 proceeding for any purpose.

21  
22 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date set  
23 forth below.

24 **SO AGREED AND APPROVED AS TO CONTENT**  
25  
26  
27  
28

1 Dated: **01/05/2021** PLAINTIFF

2 Alesha Davis  
3 Alesha Davis

4 Dated: \_\_\_\_\_

CALIFORNIA METAL-X (CMX)

5 By: \_\_\_\_\_  
6 Karen Strelitz  
7 Executive Vice President

8  
9 **APPROVED AS TO FORM**

10 Dated: 1/11/21

BRODSKY & SMITH, LLC

11 By: Evan J. Smith  
12 Evan J. Smith (SBN:242352)  
13 Attorneys for Plaintiff

14  
15 Dated: \_\_\_\_\_

CASTELLON & FUNDERBURK LLP

16 By: \_\_\_\_\_

17 Ruben A. Castellón (SBN 154610)

18 Attorneys for California Metal-X (CMX)

19  
20 **IT IS SO ORDERED.**

21 Date: \_\_\_\_\_

22 The Honorable Dolly M. Gee  
23 United States District Court Judge  
24 Central District of California



1 Dated: \_\_\_\_\_

**PLAINTIFF**

2  
3 \_\_\_\_\_  
Alesha Davis

4 Dated: 01.05.2021

**CALIFORNIA METAL-X (CMX)**

5 By: Karen Strelitz  
6 Karen Strelitz  
7 Executive Vice President

8  
9 **APPROVED AS TO FORM**

10 Dated: \_\_\_\_\_

**BRODSKY & SMITH, LLC**

11 By: \_\_\_\_\_  
12 Evan J. Smith (SBN:242352)  
13 Attorneys for Plaintiff

14  
15 Dated: 01/08/2021

**CASTELLON & FUNDERBURK LLP**

16 By: Ruben A. Castellón  
17 Ruben A. Castellón (SBN 154610)

18 Attorneys for California Metal-X (CMX)

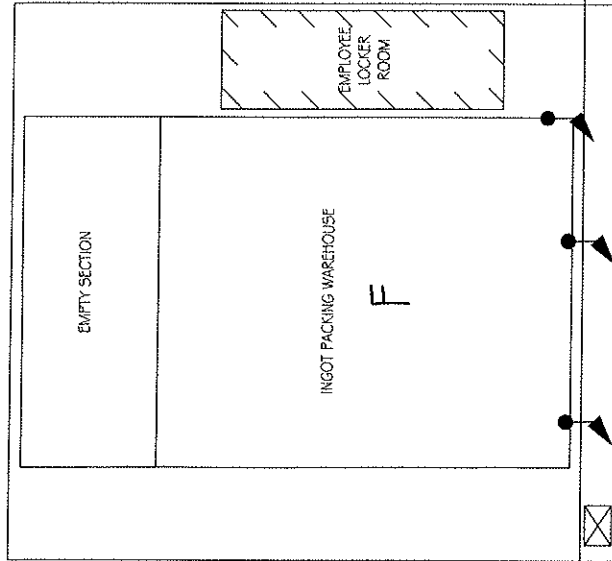
19 **IT IS SO ORDERED.**

20  
21 Date: \_\_\_\_\_

22 \_\_\_\_\_  
23 The Honorable Dolly M. Gee  
24 United States District Court Judge  
25 Central District of California

# Exhibit A

E. 57th STREET



NOTES:

1. Rotary Furnace
2. Rotary Furnace Heat Exchanger
- 3a. Rotary Furnace Baghouse #1
- 3b. Rotary Furnace Baghouse #2
4. Induction Furnace Baghouse
5. Wheelabrator Baghouse
6. Wheelabrator
7. Wire Chopper #1
8. Wire Chopper Cyclone
9. Metal Shredder
10. Metal Shredder and Briquetter Baghouse

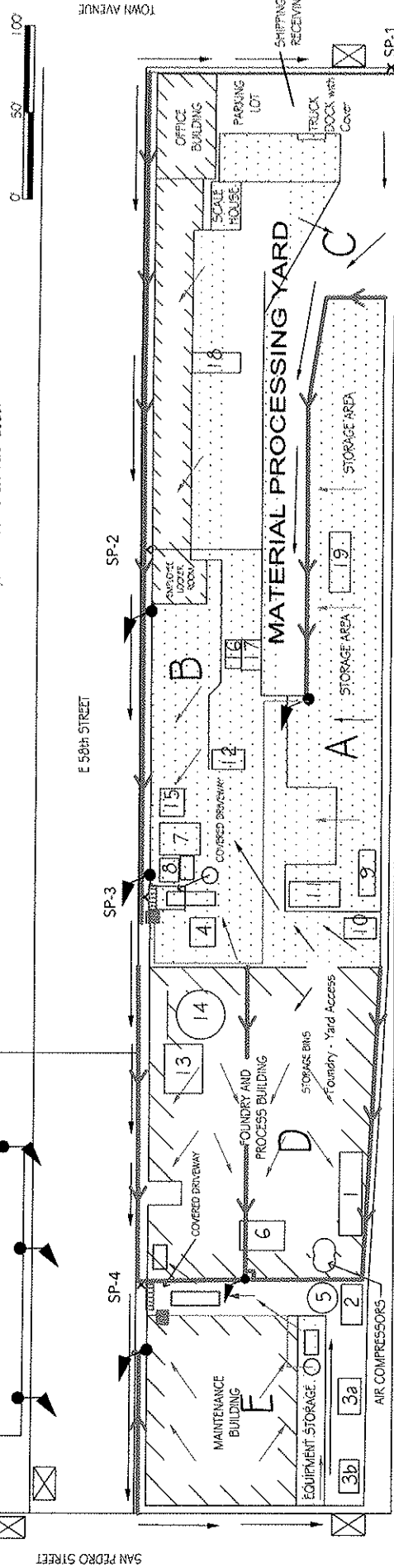
11. Metal Briquetter
12. Aluminum Shredder
13. Induction Furnaces
14. Cyclone and Spark Arrestor
15. Wire Chopper #2
16. Radiator Processor
17. Magnetic Separator
18. Shell Casing Separator
19. Sierra Shredder-Shreds Shears

LEGEND

- Covered Process/Storage Area
- Open Area
- Municipal Storm Sewer Inlet
- Drainage Flow
- Roof Downspouts
- Property Line
- Subdrainage Areas
- Storm Water Flow
- Roof Rain Gutters
- Driveway Trench & Gate
- Storm Water Collection Sump & Pump
- Drain Pipe/Force Main
- Storm Water Attenuation Tank
- Storm Water Infiltration Gallery
- Treatment flow to infiltration
- SP-1(Typical) storm water discharge sampling location

Site Map/Drainage Plan

Please note: Storm Water Treatment System will be in effect March 2020.



Note: After implementation of the treatment and infiltration systems storm water discharge will only occur at SP-3 and SP-4 if the 85th percentile storm is exceeded.

RAILROAD TRACKS

E. 58th AVENUE

APN: 5101007003

Issue Date: 8/13/2015

Revision Date: 3/3/2020

Drawn By: Michael McEvoy

CALIFORNIA METAL-X

366 E 58th Street  
Los Angeles, CA 90011

**KERAMIDA**  
ENGINEERS • SCIENTISTS • PLANNERS  
GLOBAL EHS & SUSTAINABILITY SERVICES

# Exhibit B

## ASSUMPTION OF RISK, RELEASE, AND INDEMNITY AGREEMENT

I understand that I am being given temporary entry to the following property (the "Site"):

366 East 58th Street located in Los Angeles, California

In consideration of the forgoing, I agree to the following:

I acknowledge and agree that my entry onto the Site is entirely voluntary and at my own risk. Except for the intentional or grossly negligent acts or omissions of Indemnified Parties, I agree to indemnify, defend, hold harmless and release California Metal-X, its shareholders, officers, directors, employees, agents, attorneys, successors, assigns, lenders, landlords, trustees, beneficiaries, and any other person(s) related to the Site or the activity at the Site (collectively "Indemnified Parties") from any and all demands, lawsuits, damages, claims, settlements, judgments, losses, liability, or expenses (including interest, attorney fees, and expert witness fees) for personal injury, illness (including without limitation potential exposure to COVID-19), death, or property damage, caused by, arising from or related to my entry onto the Site.

I confirm that at the time of the site inspection that I do not have any communicable disease or symptoms of a communicable disease, including without limitation COVID-19 symptoms as outlined in current Centers for Disease Control guidance including: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and/or diarrhea. I agree that if I have any of these symptoms at the time of the site inspection that I will not be allowed to participate in the site inspection and the site inspection will be cancelled.

I agree that I will wear personal protective equipment at the site inspection, including, but not limited to, the following: protective eye gear (goggles or glasses), face covering (covering both nose and mouth), and closed toe shoes (steel toe shoes). I also agree to maintain at least six feet social distance from all employees and representatives, including attorneys and experts.

I agree that I will not assign my rights or delegate my obligations under this Agreement and that there are no third-party beneficiaries.

I HAVE READ THIS DOCUMENT AND FULLY UNDERSTAND AND AGREE TO EACH AND EVERY PROVISION.

Signature: Bill Habenicht

Company: Compliance Management, Inc.

Name: Bill Habenicht

Title: QISP ToR

Purpose of Visit: Stormwater BMP Inspection

**Exhibit B**

**Agreement of Alesha Davis' Representative**

I, Bill Habenicht, am Alesha Davis' consultant, and have read, understand, and agree to comply with, and be bound by, all of the terms and conditions contained in the attached Site Visit Agreement entered into between Alesha Davis and California Metal-X (CMX).

By: Bill Habenicht

Title: QISP ToR

Signature: 

Date: 12/9/2020



27 January 2021

Via Email:

Hunter.J.Kendrick@usdoj.gov

Erica.Boyd@usdoj.gov

US Department of Justice  
Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-07415

RE: Alesha Davis v. California Metal-X (CMX) Civil Case No.: 2:20-cv-07066-DMG-AFM

Dear Mr. Kendrick and Ms. Boyd:

The Council for Watershed Health has read the proposed consent decree for the above referenced citizen suit. The Council for Watershed Health (CWH) understands that as a result of the entry of the proposed consent decree by the Court, CWH shall receive funds in the amount of Three Thousand Dollars (\$3,000.00) for use on a Supplemental Environmental Project. CWH is recognized as an exempt entity under section 501 (c)(3) of the Internal Revenue Code. Any monies CWH receives under the consent decree will be used only for the purposes specified in the consent judgement to alleviate environmental harms done to the Los Angeles River and its tributaries. No money will be used for lobbying purposes. Once the Supplemental Environmental Project (SEP) is completed, CWH will submit to the United States District Court Central District of California and to the parties a letter describing how the SEP funds were spent.

Attached is a project description which details how the funds will be spent.

If any additional information is needed, please contact me via email at [eileen@watershedhealth.org](mailto:eileen@watershedhealth.org).

Sincerely,

Eileen Alduenda  
Executive Director

cc:

Evan J. Smith – [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)

Ryan P. Cardona – [rcardona@brodskysmith.com](mailto:rcardona@brodskysmith.com)

Ruben A. Castellón – [rastellon@candffirm.com](mailto:rastellon@candffirm.com)



The Council for Watershed Health (“CWH”) is a 501(c)(3) non-profit organization. Our mission is to advance the health and sustainability of our region’s watersheds, rivers and habitats - both in natural areas and urban neighborhoods. We do this through science-based research, education and inclusive stakeholder engagement.

### **Elmer Paseo Refresh and Replant**

Almost a decade ago, CWH managed the implementation of the Elmer Avenue Neighborhood Retrofit (Elmer Avenue) demonstration project in the Sun Valley neighborhood of the City of Los Angeles. Elmer Avenue is a neighborhood scale retrofit project that incorporates stormwater management strategies. It was completed for the neighborhood street and residences in 2010 and the alley in 2012. The strategies completed on both private and public property mimic natural processes to manage stormwater runoff and result in multiple benefits. These benefits include the infiltration of runoff that augments local water supplies and improved water quality of runoff that flows to the Los Angeles River (LA River). Elmer Avenue is one of the region’s first multi-benefit “green street” projects. It manages runoff from 50 acres upstream and achieved the goals of reducing flooding, increasing stormwater runoff quality, educating residents and stakeholders on local watershed issues, and increased green space and habitat. Upstream runoff managed at the site includes runoff from industrial facilities and from roadways serving traffic from industrial facilities adjacent to the residential neighborhood that would otherwise reach the LA River without being treated or infiltrated.

The Elmer Avenue Neighborhood Retrofit Project (Elmer Paseo) included the redesign of a neglected alley at the southern end of Elmer Avenue. The Elmer Paseo was redesigned to manage 10 acres of runoff from the surrounding neighborhood. Elmer Paseo manages dry and wet weather runoff with design strategies that mimic natural processes. Elmer Paseo features a vegetated bioswale and a permeable concrete pathway that captures and directs runoff to a subsurface infiltration trench. The original plant palette featured 100% plants native to the surrounding area. The redesigned alley captures, cleans, and infiltrates runoff year-round; reduces local flooding; improves walkability and safety; increases neighborhood green space; provides habitat for pollinators; and is used to educate Sun Valley Magnet students and other students on watershed stewardship.

Because this demonstration landscape is now 8 years old and requires maintenance, it shall be refreshed and replanted to ensure it continues to provide benefits to the Elmer Avenue residents and the LA River Watershed. Over the years, sediment has filled in the swale and runoff has carried weed seed that has germinated and grown to displace many of the native plants.

We propose to assemble the original design and construction team and project partners to facilitate a review and assessment of the successes and challenges of Elmer Paseo. The team will develop a set of improvement and enhancement recommendations, and will ultimately regrade and replant the vegetated bioswale to ensure it provides water quality benefits in the LA River Watershed for years to come. If feasible, we’ll also provide 1-2 tours for Sun Valley Magnet School teachers and their students.



This SEP disbursement will be used to support the assessment of the Elmer Avenue Neighborhood Retrofit demonstration project, the project enhancement plan, and the enhancement implementation (e.g. swale sediment and weed removal). This SEP will be supplemented by approximately \$60,000 in other SEP funding and approximately \$10,000 in non-SEP funding.